

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEKENTA RASHAD PARCHMAN,

Defendant-Appellant.

UNPUBLISHED

January 3, 2012

No. 299905

Wayne Circuit Court

LC No. 10-002460-FC

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and unlawful imprisonment, MCL 750.349b. Defendant was sentenced to 5½ to 20 years' imprisonment for the first-degree home invasion conviction and 4 to 15 years' imprisonment for the unlawful imprisonment conviction. He appeals of right. We affirm.

On appeal, defendant argues that he was denied his Sixth Amendment right to the effective assistance of counsel, because trial counsel failed to provide notice of an alibi defense to the trial court and investigate potential alibi witnesses. We disagree.

Ineffective assistance of counsel claims are mixed questions of law and fact. We review a trial court's finding of fact, if any, for clear error. We review de novo any constitutional issue arising from an ineffective assistance of counsel claim. *People v Swain*, 288 Mich App 609, 643; 794 NW2d 92 (2010). Defendant did not move for a new trial or a *Ginther*¹ hearing in the trial court, and so our review is limited to errors apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

To prove a claim of ineffective assistance of counsel, a defendant must establish (1) that counsel's performance fell below objective standards of reasonableness, (2) but for counsel's error, there is a reasonable probability that the result of the proceedings would have been different. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). Effective assistance of

¹ *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973).

counsel is presumed and the defendant bears a heavy burden to prove otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

A defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses. If the defendant claims his trial counsel was ineffective for failing to raise a defense, he must show that he made a good-faith effort to avail himself of the right to present a particular, substantial defense. A substantial defense is defined as a defense that might have made a difference in the trial's outcome. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

We cannot say that trial counsel's actions fell below an objectively reasonable standard because defendant presents no evidence that he or anyone else told counsel about his potential alibi before or during the trial. Furthermore, defendant failed to provide affidavits from his potential alibi witnesses, so nothing in the record indicates that his purported alibi witnesses would have actually testified that he was at the 25 Hour Motel at the time of the crime. Finally, without any evidence of what the alibi testimony would have been, it is impossible to find a reasonable probability that the trial would have ended differently if counsel had pursued the alibi witnesses.

Affirmed.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher